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RECEIVED
MAR 19 1992
HUB LAW OFFICES

7 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
11 a California not-for-profit)
religious corporation;)
12 Plaintiff,)
13 vs.)
14 GERALD ARMSTRONG; DOES 1 through 25,)
15 inclusive,)
16 Defendants.)

Case No. 152229

RESPONSE OF PLAINTIFF
CHURCH OF SCIENTOLOGY
INTERNATIONAL TO GERALD
ARMSTRONG'S REQUEST FOR
EVIDENTIARY HEARING IN
TAKING AN ORAL TESTIMONY

Date: March 20, 1992
Time: 9:00 a.m.
Dept: 4

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18 On the afternoon of March 19, 1992, Plaintiff's counsel
19 received via telecopier a copy of Gerald Armstrong's ("Armstrong")
20 REQUEST FOR EVIDENTIARY HEARING IN TAKING OF ORAL TESTIMONY IN
21 EXTRAORDINARY CASE ("Request"). The Request should be denied and
22 Armstrong and his counsel sanctioned for submitting it. Rule 323 of
23 the California Rules of Court provides that evidence at law and
24 motion hearings is to be without testimony or cross-examination,
25 except as allowed for good cause or as permitted by local rule. A
26 party seeking permission to introduce oral evidence must file no
27 later than three (3) court days before the hearing a written
28 statement setting forth the nature and extent of the evidence AND a

1 reasonable time estimate. When the statement is filed less than
2 five (5) court days before the hearing, the filing party shall serve
3 a copy on the other parties in a manner to assure delivery to the
4 other parties no later than two (2) days before the hearing. The
5 Request was filed only one (1) day prior to the hearing, and was
6 served upon Plaintiff's counsel less than twenty-four (24) hours
7 prior to the time set for commencement of the hearing. Armstrong
8 advances no reason for his failure to fulfil the provisions of Rule
9 323.

10 Armstrong seeks to have this Court hear his oral testimony
11 concerning the circumstances surrounding his execution of the
12 Settlement Agreement. Plaintiff properly noticed Armstrong's
13 deposition for March 18, 1992, precisely because it wished to
14 examine Armstrong on this topic. Armstrong's counsel objected,
15 citing demands on his time as a sole practitioner. Plaintiff
16 offered to limited the deposition to half a day. Armstrong's
17 response was to seek a protective order from this Court which has
18 not as yet been granted. With this background, the timing of the
19 Request is easily understood. Had the Request been timely filed,
20 Armstrong's intent to testify would have been known prior to his
21 attempt to seek a protective order and would have furnished even
22 more reason for that protective order to be denied.

23 Plaintiff's key witness on this issue is Lawrence Heller, who
24 left on a vacation on March 18, 1992. Had the Request been timely
25 served, Plaintiff would have procured Heller's attendance. It is
26 outrageous for Armstrong to refuse to submit himself to a properly
27 noticed deposition and at the same time seek permission to present
28 his oral testimony.

1 Armstrong also seeks to present the testimony of Michael
2 Hertzberg on the subject of whether or not the Settlement Agreement
3 was "approved" by Judge Breckenridge. As Armstrong's counsel well
4 knows, Mr. Hertzberg has no knowledge of this subject. Their
5 attempt to have Mr. Hertzberg testify is merely another effort by
6 Armstrong to inundate the Court with the irrelevancies and confuse
7 the issues which it must determine.


8 Finally, California Rule of Court 227 specifically authorizes
9 an award of sanctions for failures to comply with Rules of Court.
10 Plaintiff submits that the circumstances and timing of the Request
11 make an award of sanctions appropriate and necessary.

12 DATED: March 19, 1992

Respectfully submitted,

13 WILSON, RYAN & CAMPILONGO

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15 BY:


16 ANDREW H. WILSON, Attorneys for
17 Plaintiff Church of Scientology
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